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SUPREME COURT, U.S.

NO. 83-6173

IN THE SUPREME COURT

OF THE UNITED STATES OF AMERICA

OCTOBER TERM, 1983

ROLAND PAUL HAMILTON,
Petitioner,

v.

WALTER D. ZANT,
Respondent.

PETITION FOR WRIT OF CERTIORARI

TO THE SUPREME COURT OF GEORGIA

ROBERT G. FIERER, ESQ.
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QUESTION PRESENTED

Did the Supreme Court of Georgia, in expressly overruling the findings and conclusions of the Trial Court, err in holding that Petitioner was not prejudiced by the ineffective assistance of his counsel at the guilt-innocence stage of his trial, without application of standards of review set out in Washington v. Strickland, 693 F.2d 1243 (5th Cir. 1982), cert. granted, __ U.S. __ (1983), or in United States v. DeCoster, 624 F.2d 196 (D.C. Cir. 1976)?

LIST OF PARTIES TO THE PROCEEDINGS

The caption of this case contains the names of all parties to this proceeding.

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STATEMENT OF THE PROCEEDINGS BELOW

Petitioner, ROLAND PAUL HAMILTON, was indicted for murder in Chatham County, Georgia, in June of 1977. He was convicted in a jury trial and sentenced to death. A Motion for a New Trial was denied and a Notice of Appeal was filed on March 10, 1979. The Supreme Court of Georgia affirmed the conviction and sentence on appeal. Hamilton v. State, 244 Ga. 145 (1979). A Petition for Writ of Certiorari was granted by this Court and the case was remanded to the Supreme Court of Georgia for further review. Hamilton v. Georgia, 446 U.S. 961 (1980).

On remand, the Supreme Court of Georgia reaffirmed the death sentence. Hamilton v. State, 246 Ga. 264 (1980). A subsequent Petition for Writ of Certiorari was denied by this Court on January 12, 1981. Hamilton v. Georgia, 449 U.S. 1103 (1981).

Petitioner filed a Petition for Writ of Habeas Corpus in the Superior Court of Butts County, Georgia, in March, 1981. The Superior Court granted Petitioner's Petition for Habeas Corpus relief on June 21, 1983. (Opinion attached, Appendix-Exhibit C.) On October 5, 1983, the Supreme Court of Georgia affirmed in part and reversed in part the decision of the lower court. (Appendix-Exhibit A.) On October 25, 1983, Petitioner's Motion for a Rehearing was denied. (Appendix-Exhibit B.)

JURISDICTION

On June 21, 1983, Petitioner's Petition for Writ of Habeas Corpus was granted by the Superior Court of Butts County, Georgia and the State of Georgia was ordered to grant Petitioner a new trial or release him. On October 5, 1983, the Supreme Court of Georgia affirmed the lower court's decision granting Petitioner's Petition for Habeas Corpus relief relating to his claim of ineffective

assistance of counsel at the sentencing phase of his trial and upheld the decision granting him a new sentence hearing. However, in the same opinion, the Supreme Court of Georgia reversed the decision of the lower court granting Petitioner a new trial. Petitioner's Motion for a Rehearing to the Supreme Court of Georgia was denied on October 25, 1983.

Jurisdiction of this case is conferred upon this Court by 28 U.S.C. § 1257(3).

CONSTITUTIONAL PROVISIONS

The Constitution of the United States:

Amendment V:

> No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Amendment VI:

> In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

Amendment XIV:

> Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of laws.

STATEMENT OF THE CASE

FACTS ELICITED AT TRIAL

The evidence presented at the trial of this matter in 1978 was recounted in considerable detail by the Supreme Court of Georgia in its opinion rendered on the direct appeal of the case. Hamilton v. State, 244 Ga. 145 (1979). They will be recounted here only briefly.

According to virtually all accounts, on May 14, 1977, Appellee and his then girlfriend, Billie Jean Rose, met the deceased, John Shinall, in a lounge in Savannah, Georgia. (Trial transcript, hereinafter Tr., 159.) After drinking together for a few hours, the three left for Shinall's house. At Shinall's house, the three went into the living room and talked for about thirty minutes. (Tr. 161.)

Petitioner and Ms. Rose differ significantly as to what occurred next. According to Ms. Rose, she went into Shinall's kitchen to fix a meal for the threesome. Returning to the living room some twenty minutes later to ask Shinall and Petitioner how they wished their steaks to be cooked, she discovered the living room lights out. (Tr. 162.) According to Ms. Rose, one of the men asked her not to turn the lights on. However she did so, and allegedly saw Petitioner stabbing Shinall who lay on the couch. (Tr. 162-163.)

According to Ms. Rose, she picked up Shinall's dog and immediately left the house. (Tr. 163.) Ms. Rose's version states that the Petitioner picked her up down the street and the pair left Savannah in Shinall's Camaro with Shinall's television set and stereo in the car. (Tr. 163-165.)

Petitioner's account differed from that of Ms. Rose in several significant respects. According to his second statement to the police, he and Billy Jean Rose lay down in Shinall's bedroom to rest after talking in the living room. He fell asleep and later awoke to the sound of Ms.

Rose's screams. (Tr. 134.) Rushing to the living room he encountered Ms. Rose nude and Shinall over her, appearing to be ready to rape her. (Tr. 135.) He struggled with Shinall, first hitting him five or six times, then stabbing him once or twice. (Tr. 137.) At the same time, Ms. Rose was hitting Shinall over the back of the head with a glass bottle. According to Petitioner, he and Ms. Rose then decided to take Shinall's stereo, his television and approximately fifty dollars from his wallet. (Tr. 138-139.)

With the exception of a pair of woman's underpants found at the crime scene, the rest of the evidence presented at trial went largely uncontradicted. According to both Ms. Rose and Petitioner, the two left Savannah together in Shinall's car and ultimately obtained carnival jobs in Kentucky. (Tr. 139-143, 167.)

Police discovered the body several days after the killing. An autopsy revealed that Shinall had sustained injuries from a blunt instrument and four stab wounds. (Tr. 253.) Death resulted from a stab wound through the heart. (Tr. 254-255.) The cause of death was stipulated and therefore no expert testimony was heard as to that matter. (Tr. 84-85.)

According to Ms. Rose, neither she nor Petitioner had any plan to rob Shinall when they went to his house that night. (Tr. 177.) Also, Ms. Rose was never booked or formally charged with anything in connection with this incident (Tr. 97-98.), and was, in fact, by Order of the Court immune from prosecution. (H.C. 4/15/83, 42.)

The trial court submitted the case to the jury on alternative theories, including malice murder, felony murder and manslaughter. (Tr. 243-246.) The jury acquitted Petitioner of malice murder but found him guilty of felony murder.

At the sentencing phase of the trial, the State presented one witness, Dr. Larry Howard, who had performed the autopsy on John Shinall. Dr. Howard described the wounds to the body, identifying the fatal wound and was only very, very briefly cross-examined by defense counsel. (Tr. 252-258.) The defense rested at the sentencing phase, as they did at the guilt phase without presenting any evidence. (Tr. 258, 211.) The jury was charged with two statutory aggravating circumstances; returning the following verdict:

> We, the jury, find the offense of murder was outrageously or wantonly vile, horrible, or inhuman, in that it involved torture, depravity of mind, or an aggravated battery to the victim, and we further find that the offense of murder was committed while the offender was engaged in the commission of another capital felony, and we recommend the death penalty. (Tr. 274-275.)

Pursuant to this verdict, the trial judge sentenced Petitioner to death by execution in the electric chair.

FACTS ELICITED AT HABEAS HEARINGS

During the hearings in this Habeas Corpus proceeding, Petitioner presented several live witnesses along with documentary evidence.

The first witness was the trial prosecutor. (H.C. 10/6/81, 14.) He testified that his office had at the time a very candid and open discovery policy. (H.C. 10/6/81, 34.) He also testified that:

> It is most assuredly my practice, as well as my obligation, to interview witnesses I intend to call. (H.C. 10/6/81, 22).

Although he recollected that there was a Jackson v. Denno hearing held in this case (H.C. 10/6/81, 51.), the record of the case shows that no Jackson v. Denno hearing was held but was waived by the Defendant.

The next witness was Mr. John Ranitz who was Petitioner's trial counsel. Mr. Ranitz was appointed by a Superior Court Judge to represent Mr. Hamilton and was not

paid any attorney's fee. (H.C. 10/6/81, 60-61.) Also, he did not make application for any investigative funds, although, he acknowledged that under some circumstances that is the practice in the Chatham County circuit. (H.C. 10/6/81, 61.) According to Mr. Ranitz, he was given complete access to the District Attorney's file which included investigative reports, witness statements, and the Defendant's statements, and therefore found "very little area where investigation was needed." (H.C. 10/6/81, 62.) That last piece of testimony elicited the following exchange:

> Q. Well, when you say very little area where investigation was needed, does that mean that other than the District Attorney's file, you conducted no independant investigation?
>
> A. No.
>
> Q. None?
>
> A. None. (H.C. 10/6/81, 71.)

In fact, Mr. Ranitz admitted that he never even attempted to interview or speak with Dr. Larry Howard prior to stipulating the cause of death or cross-examining him at the sentencing phase. (H.C. 10/6/81, 71.)

Mr. Ranitz was also questioned in some detail about his failure to investigate the victim's prior marital difficulties which led to four or five visits from the police and murder charges being brought against his ex-common law wife. (H.C. 10/6/81, 72-75.) Mr. Ranitz never learned, prior to or at trial, what it was that brought police officers out to the deceased's apartment four or five times. (H.C. 10/6/81, 75.)

Mr. Ranitz also did not attempt to corroborate his client's story that Billie Jean Rose was fired from her job at the carnival in Kentucky for stealing money. (H.C. 10/6/81, 77-80.) Mr. Ranitz testified, and the record

reflects, that he questioned only three potential witnesses on voir dire. (H.C. 10/6/81, 85.)

Much of Mr. Ranitz's testimony dealt with his failure to put up any evidence at the sentencing phase. (H.C. 10/6/81, 85-95.) According to Ranitz, he did not put up any evidence at the sentencing phase because he did not have any. (H.C. 10/6/81, 108.) In that regard, Mr. Ranitz never contacted Petitioner's mother in Arkansas, although he had the telephone number. (H.C. 10/6/81, 92-93.) Also, he made absolutely no inquiry about Petitioner's prior conviction in Indiana for aggravated assault, even though that information was accessible in the district attorney's file. (H.C. 10/6/81, 90-91 and H.C. 4/15/83, 57-83.)

Neither Mr. Ranitz nor anyone else from his office visit the topless bar where Billie Jean Rose had worked. (H.C. 10/6/81, 99.) Nor did he interview any of the witnesses from the various lounges that Shinall, Rose and the Petitioner visited prior to the crime. According to Mr. Ranitz, the trial was delayed for a while because Billie Jean Rose had "freaked out" and the prosecution could not find her. (H.C. 10/6/81, 102.) However, there was no evidence in cross-examination or argument about this incident. (H.C. 10/6/81, 102-103.) Additionally, Ranitz made no investigation as to the lady's underpants which became an issue in the case. (H.C. 10/6/81, 122, 123.)

Mr. Ranitz stated that his overall "plan of the case" was

> basically that Paul was trying to defend his girlfriend from sexual assault, and this thing was a heat of passion deal. I did not have much hope for anything less than a manslaughter; not much hope for manslaughter. (H.C. 10/6/81, 119.)

Much of the rest of the evidence presented at the Habeas Hearing exemplifies what was was lost to

Petitioner's defense by Mr. Ranitz's failure to conduct any independant investigation beyond reading the District Attorney's file.

Among those testifying was Dr. Howard, the pathologist who conducted the autopsy. Dr. Howard testified as to his examination of John Shinall and recounted the wounds to him in similar detail as was given at the sentencing phase some four years earlier. According to Dr. Howard, there were wounds to the head caused by a blunt object. (H.C. 12/1/81, 9-12.)

He was able to determine, however, that a stab wound to the chest caused death, because the head wounds showed a loss of very little blood. (H.C. 12/1/81, 13.) Dr. Howard was also able to state that the wounds to the head occurred prior to the stab wounds. (H.C. 12/1/81, 13-14.) Due to the condition of the body at the time it was autopsied, Dr. Howard was unable to determine how close in time the head and chest wounds occurred. He did say, however, that the wounds to the head occurred within a matter of moments prior to the wounds to the chest. (H.C. 12/1/81, 14.)

In discussing the nature of the wounds, Dr. Howard stated "I think that they are combative wounds; I don't think that they are torturing wounds," and the blows were apparently inflicted to incapacitate, not to inflict pain. (H.C. 12/1/81, 15.) Dr. Howard concluded that the wounds were consistent, therefore, with mutual combat. Moreover, Dr. Howard said that the wounds were consistent with the explanation that two people inflicted wounds on John Shinall, one standing behind with a blunt instrument and one in front with a knife. (H.C. 12/1/81, 16.)

Dr. Howard recalled testifying at the trial of this case, although he was not sure whether it was the sentencing or the guilt phase. (H.C. 12/1/81, 16-17.) He

recalled speaking only with the District Attorney prior to coming to Savannah to trial or in fact prior to testifying. (H.C. 12/1/81, 17, 27.) Moreover, Dr. Howard testified that it is his practice to talk to defense attorneys, if contacted, and share with them any information which he has about the case barring some objection by the prosecutor. (H.C. 12/1/81, 28-29.)

In addition to Dr. Howard's testimony, investigation into the victim's background, particularly his relationship with his common-law wife, would have produced bountiful evidence that would corroborate Petitioner's statement that when he came into the room, John Shinall was performing a violent act on Billie Jean Rose. For example, in a police report filed on May 24, 1977, (H.C. 4/15/83, 84-88.) reference is made to the statements of neighbors of Shinall concerning the animosity between Mr. Shinall and his common-law wife. There were several references to physical fights between the two. Moreover, one neighbor stated that one day after the crime occurred, he looked through the curtains of the front door and observed a bloody pillow. That witness also told the police that he did not think anything about that because he was knowledgeable of fights between the deceased and his wife where "blood was wasted." In fact, in a recorded statement the witness stated:

> If I did, I'm not saying that I didn't hear it and I'm not saying that I did, but if I hear I wouldn't have thought nothing about it. They fight constantly. We have been living there for almost two months and I doubt that we have got three good night sleeps since we been there. I mean steady fighting. (H.C. 4/15/83, 95.)

Finally, the police report indicates that the deceased's common-law wife and another neighbor went into the apartment after the death, saw the body on the floor, but never said a word about it. (H.C. 4/15/83, 86-87.) Mr. Ranitz never cross-examined the deceased's common-law wife regarding her relationship with her husband nor about her visit to the apartment.

No evidence was presented by the defense at the sentencing phase of the trial. According to Ranitz, they had no mitigating evidence to present to the jury. (H.C. 10/6/81, 258). However, a single phone call to the Petitioner's mother would have uncovered at least fourteen potential character witnesses who knew Paul as he grew up and could tell about his past. (H.C. 4/16/82, 54-99.) During his trial, Paul was under the severe disability of being a stranger to Savannah and Chatham County. He had spent only two weeks of his life in Savannah and found himself on trial for his life. Yet, none of the people who could talk about Paul Hamilton and his life, who could make him into a living human being, who could perhaps elicit some compassion from a jury, were even contacted by the lawyer who represented him.

The lawyer testified that he had no mitigating evidence. Within minutes after Mr. Ranitz so testified, Paul Hamilton's mother took the witness stand and described how she was contacted by telephone by a law office in Atlanta, Georgia. After speaking with an employee, she and her sister came to Georgia at their own expense to be present and testify at the Habeas hearing. Also at that hearing, fourteen affidavits were submitted into evidence. These documents were prepared, sworn to, and signed by friends and relatives of Petitioner. The common thread running through them all is that these people wanted to help Petitioner but did not know how.

The above briefly recounts most of the salient facts of this matter. It also provides clear and abundant support for the Trial Court's decision that under the totality of circumstances, that Petitioner received ineffective assistance of counsel in the trial of the case.

FEDERAL QUESTION INVOLVED

In his original Petition for Writ of Habeas Corpus to the Superior Court of Butts County, Georgia, Petitioner alleged that he was denied effective assistance of counsel in both the guilt phase and the sentencing phase of the trial of his case in contravention to the Fifth, Sixth and Fourteenth Amendments to the Constitution of the United States. The lower court agreed that Petitioner was denied effective assistance of counsel and due process of law contrary to the Fifth, Sixth and Fourteenth Amendments to the Constitution of the United States and granted Petitioner's Writ in this regard. In light of its holding, the lower court did not rule on the other issues raised in Petitioner's initial Petition. Respondent appealed the decision of the lower court and the Supreme Court of Georgia addressed the issue of effective assistance of counsel in its opinion of October 5, 1983.

REASONS FOR GRANTING THE PETITION

THE SUPREME COURT OF GEORGIA ERRED IN CONCLUDING THAT, DESPITE THEIR FINDING OF FACT THAT PETITIONER'S TRIAL COUNSEL DID NOT ENGAGE IN ANY PRETRIAL PREPARATION OR CONDUCT ANY PRETRIAL FACTUAL INVESTIGATION INTO THE CASE, PETITIONER WAS NOT PREJUDICED AT THE GUILT-INNOCENCE PHASE OF THE TRIAL.

In its opinion, the Supreme Court of Georgia, listed the numerous findings of fact relating to the issue of ineffective assistance of counsel made by the lower court.

The Supreme Court concluded that the Superior Court findings are supported by the evidence.

Among the facts found by the lower court was that Petitioner's trial counsel engaged in no pretrial factual investigation nor any meaningful pretrial preparation of his case. Indeed, this fact was admitted to at the Habeas Corpus hearing by Petitioner's former counsel, even though at the same time he realized that Petitioner had just one factual defense.

Many of the findings of fact of the lower court relating to Petitioner's trial counsel's failure to prepare and investigate this case go to this single line of defense. For example, Petitioner's trial counsel admittedly failed to contact and interview the medical examiner whose testimony as to cause of death was stipulated to at the guilt-innocence phase. At the Habeas hearing, the medical examiner testified that the nature of the wounds afflicted upon the deceased, were consistent with and corroborated the pretrial statement given by the Petitioner to the police which was admitted into evidence. Moreover, the wounds were inconsistent with one of the State's theories that Petitioner had tortured his victim. In fact, the medical examiner stated that the wounds were "combative wounds" as opposed to torture wounds.

The lower court also found that trial counsel failed to investigate the deceased's propensity for violence, which was known to local police officers and neighbors. This fact was therefore never brought to the attention of the jury. Similarly, trial counsel failed to conduct any investigation into the background of the only eyewitness to the occurrence as it relates to her relationship with Petitioner and any agreements she had with the District Attorney's office. Had such an investigation been conducted, evidence could have been uncovered and

presented which was consistent with Petitioner's statement and inconsistent with the eyewitness' testimony.

These areas are only examples of the many ways in which the lower court found that Petitioner's trial counsel's total failure to investigate the case prejudiced Petitioner at his trial. Indeed, the lower court acknowledged that the specific findings of fact made in this regard

> represent[ed] [only] some of those matters elicited from the testimony of defense counsel at the trial which have compelled this Court to conclude that there was inadequate preparation for the trial, and ineffective representation at that stage. (Appendix-Exhibit C, p. 11.)

The Supreme Court of Georgia upheld the lower court's decision that Petitioner's trial counsel's failure to investigate and prepare so severely prejudiced Petitioner at the sentencing phase so as to require that Petitioner be resentenced. The Georgia Supreme Court, however, held that the evidence in the case "lead inexorably to the conclusion that [Petitioner] is guilty of murder." (Appendix-Exhibit A, p. 3.) The Supreme Court concluded, therefore, that Petitioner was not prejudiced by his counsel's failure to adequately investigate and prepare the case. Citing, Washington v. Watkins, 655 F.2d 1346, 1356 (5th Cir. 1981).

The Court, however, did not frame the question of prejudice in terms of any standards or rules. Petitioner acknowledges that when allegations of inadequate preparation and investigation are the foundation upon which an ineffective assistance of counsel argument is based, some showing of prejudice may be required. Washington v. Strickland, 693 F.2d 1243, 1258-1260 (5th Cir. 1982), cert. granted, ___ U.S. ___ (1983). United States v. Morrison, 449 U.S. 361 (1981). What standard that the proof of prejudice must meet and who bears the

burden of persuasion as to that proof are questions that have yet to be answered by this Court. The case of Strickland v. Washington, __ U.S. ____, (1983), which raises these questions, is presently before the Court.

Petitioner submits he has satisfied his burden of persuasion, regardless of whether that burden of persuasion is deemed to be on him to show that his lawyer's failure to investigate and prepare a defense likely had an effect on the outcome of the trial, United States v. Decoster, 624 F.2d 196, 214 (D.C. Cir. 1976), or to show that the ineffectiveness of counsel resulted in actual and substantial disadvantage to the course of his defense before the burden shifts to the Government to show that beyond a reasonable doubt the outcome of the proceedings would not have been altered notwithstanding the ineffectiveness of counsel. Washington v. Strickland, 693 F.2d 1243, 1262 (5th Cir. 1982), cert. granted, ___ U.S. ___ (1983).

The Supreme Court of Georgia concluded that Petitioner had not demonstrated prejudice at the guilt-innocence phase of his trial without application of any standard of persuasion or proof. This conclusion is in err, particularly in light of the fact that the Supreme Court of Georgia expressly adopted the findings of fact made by the Trial Court in this case.

It appears that this Court is considering resolving the conflict in this regard between Decoster and Washington v. Strickland. In Petitioner's case, the Supreme Court of Georgia did not analyze the facts with regard to either standard. It is requested that this Court, prior to resolving the questions of burden and standards of proof, consider this case. Alternatively, should this Court issue a decision in Strickland v. Washington relating to the issue presented herein, it is

requested that this case be remanded to the Supreme Court of Georgia so that it may be re-evaluated in light of that decision.

CONCLUSION

Petitioner's trial counsel, by his own admission and by the findings of the lower courts, conducted no significant factual investigation nor engaged in any meaningful pretrial preparation as to either the guilt-innocence phase or the sentencing phase of Petitioner's trial, even though he always recognized that there was only one plausible line of defense. The particular effects that this failure to investigate and prepare had on the case, are recounted above and in the attached opinions of the lower courts. The result was to so prejudice Petitioner as to deny him effective assistance of counsel and due process of law at all stages of his trial in violation of the Fifth, Sixth and Fourteenth Amendments to the Constitution of the United States. The Supreme Court of Georgia erred in reversing the trial court and concluding that it did not.

RESPECTFULLY SUBMITTED,

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In the Supreme Court of Georgia

Decided: OCT 5 1983

40188. ZANT v. HAMILTON.

MARSHALL, Presiding Justice.

The appellee, Roland Paul Hamilton, was convicted of murder, and he was given the death penalty based on the jury's finding of two statutory aggravating circumstances. On direct appeal, his conviction and sentence were affirmed. Hamilton v. State, 244 Ga. 145 (259 SE2d 81) (1979). On certiorari to the United States Supreme Court, the death penalty was vacated and the case remanded for further consideration in light of Godfrey v. Georgia, 446 U. S. 420 (100 SC 1759, 64 LE2d 398) (1980). Hamilton v. Georgia, 446 U. S. 961 (1980). On remand, the judgment imposing the death penalty was reaffirmed. Hamilton v. State, 246 Ga. 264 (271 SE2d 173) (1980). This appeal by the state is from an order, entered in state habeas corpus proceedings, setting aside the appellee's murder conviction and death sentence on grounds of ineffective assistance of trial counsel.

The murder victim was John Shinall. The key state's witness was the appellee's girlfriend, Billie Jean Rose. Defense counsel at trial was John F. M. Ranitz, Jr.

Billie Jean Rose testified that on the day of the murder she and Hamilton had been drinking with Shinall at various bars in Savannah, Georgia; that they returned to Shinall's apartment; that Rose left the room; that when she returned, she saw Hamilton stabbing Shinall; and that she then fled with Hamilton, who took various of Shinall's belongings and some of his money.

Hamilton gave conflicting pretrial statements to the

EXHIBIT A

police. In his first statement, he admitted hitting Shinall, but he stated that it was in response to a call for help by Billie Jean Rose; he further stated that he did not know that he had killed Shinall and that Billie Jean Rose had committed the robbery. In a second statement, he admitted hitting Shinall five or six times, stabbing him, and committing the robbery.

The superior court in this proceeding has concluded that Hamilton received ineffective assistance of counsel at the guilt-innocence and sentencing stages of his trial. This conclusion is based on the following findings: that although counsel knew only four or five members of the traverse jury panel, he questioned only three jurors on voir-dire examination, and only as to a matter unrelated to capital punishment; that he made no application for investigative funds and conducted no independent investigation; that no witnesses were personally interviewed prior to their testimony; that the autopsy report and other expert medical evidence revealed that two types of wounds, stabbing and tearing, were inflicted upon the deceased; that this supported Hamilton's statement that Billie Jean Rose hit the victim on the head with a bottle; however, defense counsel failed to cross-examine Billie Jean Rose concerning this; that the deceased had a known propensity for violence, which was not investigated; that there was no investigation of grounds on which Billie Jean Rose's testimony and her credibility could have been impeached; that there was no investigation of a prior criminal conviction entered against Hamilton when he was 18 years of age, even though defense counsel knew that this would be offered against Hamilton if he was convicted; that no member of Hamilton's family was contacted prior to trial, even though they could have given evidence in mitigation; and that the state had an agreement not to prosecute Billie Jean Rose, which defense counsel did not require the state to disclose.

In this appeal, the state complains of the superior court's admission of expert testimony from other attorneys concerning their representation of other defendants in death-penalty cases. The remainder of the state's argument is to the effect that the findings of the superior court do not support the conclusion that Hamilton was rendered ineffective assistance of trial counsel.

1. As we read the superior court's order, the superior court concluded that counsel was ineffective in this case on the ground that his representation of Hamilton did not comport with the legal standard for effectiveness of counsel enunciated in the case law cited in the court's order. The relevance of the testimony of other criminal attorneys concerning their representation of other defendants in other cases is questionable, but its admission cannot be said to constitute reversible error. See Green, Ga. Law of Evidence, 2nd Ed., § 10.

2. The superior court's findings are supported by the evidence.

3. Although these findings support the conclusion that Hamilton received ineffective assistance of counsel at the penalty stage of his trial, they do not support the conclusion that he received ineffective assistance of counsel at the guilt-innocence stage.

In our opinion, even if those portions of Billie Jean Rose's testimony constituting a disclaimer of her involvement in the crimes be disbelieved as self-serving, Hamilton's own pretrial statements, as well as other evidence in the case, lead inexorably to the conclusion that he is guilty of murder. "[E]ven when counsel's investigation and preparation are determined to have been seriously inadequate, there must be a showing that the habeas petitioner was to some degree prejudiced thereby . . ." Washington v. Watkins, 655 F2d 1346, 1356 (5th Cir. 1981).

However, as argued by Hamilton, he was a transient in

Savannah, the town in which he was tried; therefore, he was unknown there. Affidavits have been obtained from various of his relatives and friends, and their testimony would have been admissible as mitigating evidence during the penalty stage of his trial. The superior court was authorized in finding that such evidence could have been obtained through investigation by reasonably diligent counsel, and that counsel's failure to produce such evidence, coupled with other inactions on his part, rendered him ineffective at the penalty stage of this case.

Therefore, the judgment is affirmed insofar as it sets aside the death penalty, and the judgment is reversed insofar as it sets aside the murder conviction.

Affirmed in part and reversed in part. All the Justices concur , except Hill, C.J., Smith and Gregory, JJ., dissent from reversal.

WAS RETURNED TODAY

OCT 25 1983

All the Justices concur, except Hill, C.J., Smith & Gregory, JJ., dissent

40188. ZANT v. HAMILTON.

Please substitute pp. 3 & 4 in the opinion which was previously sent to you in the above-styled case.

The only change is that our ¶ 1 was incorporated into the preceeding paragraph by a mistake. It is a separate paragraph.

In this appeal, the state complains of the superior court's admission of expert testimony from other attorneys concerning their representation of other defendants in death-penalty cases. The remainder of the state's argument is to the effect that the findings of the superior court do not support the conclusion that Hamilton was rendered ineffective assistance of trial counsel.

1. As we read the superior court's order, the superior court concluded that counsel was ineffective in this case on the ground that his representation of Hamilton did not comport with the legal standard for effectiveness of counsel enunciated in the case law cited in the court's order. The relevance of the testimony of other criminal attorneys concerning their representation of other defendants in other cases is questionable, but its admission cannot be said to constitute reversible error. See Green, Ga. Law of Evidence, 2nd Ed., § 10.

2. The superior court's findings are supported by the evidence.

3. Although these findings support the conclusion that Hamilton received ineffective assistance of counsel at the penalty stage of his trial, they do not support the conclusion that he received ineffective assistance of counsel at the guilt-innocence stage.

In our opinion, even if those portions of Billie Jean Rose's testimony constituting a disclaimer of her involvement in the crimes be disbelieved as self-serving, Hamilton's own pretrial statements, as well as other evidence in the case, lead inexorably to the conclusion that he is guilty of murder. "[E]ven when counsel's investigation and preparation are determined to have been seriously inadequate, there must be a showing that the habeas petitioner was to some degree prejudiced thereby . . ." Washington v. Watkins, 655 F2d 1346, 1356 (5th Cir. 1981).

However, as argued by Hamilton, he was a transient in

Savannah, the town in which he was tried; therefore, he was unknown there. Affidavits have been obtained from various of his relatives and friends, and their testimony would have been admissible as mitigating evidence during the penalty stage of his trial. The superior court was authorized in finding that such evidence could have been obtained through investigation by reasonably diligent counsel, and that counsel's failure to produce such evidence, coupled with other inactions on his part, rendered him ineffective at the penalty stage of this case.

Therefore, the judgment is affirmed insofar as it sets aside the death penalty, and the judgment is reversed insofar as it sets aside the murder conviction.

Affirmed in part and reversed in part. All the Justices concur, except Hill, C.J., Smith and Gregory, JJ., dissent from reversal.

In the Superior Court of Butts County
State of Georgia

Roland Paul Hamilton,

Petitioner,

v.

Case No. 5002
Habeas Corpus

Walter D. Zant,
Superintendent, Georgia
Diagnostic and Classification
Center,

Respondent

EXHIBIT C

ORDER

Petitioner is presently under a death sentence imposed by the Superior Court of Chatham County, Georgia. He was convicted of murder in that county on August, 1, 1978.

The conviction and sentence was affirmed by the Supreme Court. Hamilton v. State, 244 Ga. 145, 259 S.E.2d 81 (1979). The Supreme Court of the United States granted Paul Hamilton's Petition for Writ of Certiorari and remanded the case to the Supreme Court of Georgia. (446 U.S. 961 (1980)).

On remand, the Supreme Court of Georgia reaffirmed Petitioner's sentence. Hamilton v. State 246 Ga. 264, 271 S.E.2d 173 (1980). A Petition for Writ of Certiorari was filed in the Supreme Court of the United States. It was denied by the Supreme Court on January 12, 1981. Hamilton v. Georgia 449 U.S. 1103 (1981), 101 S. Ct. 900 (1981).

Paul Hamilton asserts numerous grounds for the issuance of a writ of habeas corpus. These are insisted upon, but because this Court has concluded that he was denied the effective assistance of counsel, this Court does not deem it necessary to rule upon those issues. The petitioner has been deprived of the right of effective counsel, at all stages of his trial, in violation of his rights under the Sixth and Fourteenth Amendments to the Constitution of the United States and Sections 2-101 and 2-111 of the Constitution of 1976 of the State of Georgia.

The sole inquiry has been whether the Petitioner was afforded effective representation at a trial in which his life was in the balance. No litmus test exists to make that determination. We must deal in some part with subjective standards, relying on the guidance afforded by other cases, and upon a sense of fair play in an awesome enterprise. The measure, in the end, is by a Court of justice.

The Supreme Court of Georgia has set forth a statement of the facts. Hamilton v. State 244 Ga. 145 (1979).

It is clear that in assaying claims of ineffective assistance of counsel an inquiry into the actual performance rendered by counsel based on the totality of the circumstances is required. Lovett v. Florida, 627 F.2d 706 (5th Cir. 1980), Nelson v. Estelle 642 F.2d 903, 906 (5th Cir., 1981).

A reviewing Court's objective is to judge counsel's effectiveness from the perspective reasonably available to counsel at the time of trial. Rummel v. Estelle 590 F.2d 103, 104 (5th Cir. 1979); see also Gary Goodpaster, "The Trial for Life": Effective Assistance of Counsel in Death Penalty Cases", New York University Law Review 58:299, 347 (1983); Washington v. Watkins 655 F.2d 1346, 1362 and n.23 (5th Cir., 1981). Counsel's effectiveness is not to be judged by hindsight. Rummel v. Estelle 590 F.2d 103, 104 (5th Cir. 1979). A further axiom considered by this Court is that the Sixth Amendment's guarantee does not promise errorless counsel. What it does guarantee is counsel

"reasonably likely to render and rendering reasonably effective assitance." MacKenna v. Ellis 280 F.2d 592, 599 (5th Cir. 1960), Pitts v. Glass, 231 GA. 638 (1974).

Findings of Fact

Petitioner was represented at trial and on appeal by John F.M. Ranitz, Jr., who was appointed by the Court. Habeas Corpus hearing of Oct. 6, 1981 hereinafter referred to as (H.T. Ranitz, p. 60). He is admitted to the Bar of this State and has practiced law for 33 years. Twenty-five to forty percent of his law practice is devoted to criminal work and for a period of years during his career he estimates he tried four capital cases a year. (H.T. Ranitz, p.110).

The trial commenced at about 9:30 a.m. on July 31, 1978 and concluded the following day at four-forty. At that time the jury announced it's finding of death for Paul Hamilton (Tr. Tr. p 3, and p 269).

Mr. Ranitz interviewed the Petitioner, with the aid of an associate, several times prior to trial. He talked to "some of the officers" and "some of the witnesses," the District Attorney, and he testified, he "got access to the file." (H.T. Ranitz, p.111).

Upon the impaneling of the jury Mr. Ranitz questioned three jurors (Tr.Tr. p.16, 23, 26) and those questions were in no way designed to determine the prospective juror's disposition toward capital punishment.

No application was made prior to trial for funds with which to make any investigation. (H.T. Ranitz, p.61). No

witnesses were called by the Defense for either aspect of the trial, nor was any evidence presented. This Court finds that while the witnesses Billie Jean Rose and Dr. Gary Howard were reasonably available to Counsel before trial, neither were interviewed by him. Prior to trial Mr. Ranitz knew that a theory of defense upon which he would rely would be either mutual combat or sudden impulse, (H.T. Ranitz, p.116), or both. With regard to a prior conviction of Paul Hamilton when he was 18, Mr. Ranitz had made no inquiry and was unprepared to offer any explanation of it at the sentencing phase. (H.T. Ranitz, p.91).

During the sentencing phase of the trial, Mr. Ranitz presented no evidence and made a brief closing argument in which he asserted not one word which could be construed as a plea for the life of the defendant based upon his worth as a human being. (Tr.Tr. p.262-264).

Conclusion of Law

The Court concludes that the conduct of counsel fell short of the promise guaranteed by the Constitution of our State and of the United States. In an extensive review of this case, aided by the exceedingly fine efforts of Counsel for the Petitioner and Respondent, this Court has been keenly aware that Mr. Ranitz's representation of Paul Hamilton at trial must not be measured by judgments of hindsight, and that counsel are to be given wide latitude to make tactical and strategic decisions in the conduct of trials. Mr. John F. Ranitz was asked to defend Paul Hamilton because he was

known to the appointing judge as a competent, experienced trial attorney. This Court has a high regard for Mr. Ranitz, and for his reputation as a good trial attorney.

A review of whether effective assistance has been afforded in this case must extend much further then a confidence that the attorney is competent and effective in his general work as a member of the Bar.

It has been written that -- "every criminal case is factually and contextually unique, and many variables affect criminal case verdicts. The weight and quality of the physical and testimonial evidence; the number, demeanor, and credibility of witnesses on each side; the style, character, and abilites of the prosecutor defense counsel; and trial judge; the composition of the jury; and the character of individual jurors are all significant factors determining the cause and outcome of the trial" Gary Goodpaster," The Trial for Life: Effective Assistance of Counsel in Death Penalty Cases," New York University Law Review 58:343 (1983).

In a death case where an issue is whether the defendant had effective assistance of counsel, an inescapable inquiry must be what a reasonably capable attorney should have done. His or her effectiveness necessarily has to do with a knowledge of facts and circumstances he or she possessed to aid the jury reach it's verdict both of guilt and of life itself.

This Court sees the two phases of this trial to have been intimately related, and has considered counsel's conduct

in the guilt phase as affecting the outcome of the sentencing phase.

Defense counsel knew before trial that he would present no evidence. He knew that the prosecuting witness, Billie Jean Rose, could shed some light on the defendant as a human being. It was likely that from her testimony some redeeming guilty in the defendant could be acknowledged. But he did not interview her before trial. He also knew before trial that Billie Jean Rose was the only States' witness inextricably connected to the homocide. He knew or should have been aware that she participated in the fray during which the victim was killed. She fled from the scene with the defendant. It was only later, for reasons only left to speculation, from a sense of remorse or a fear of being caught or an effort to avoid being jointly charged with the defendant, that she laid the finger of blame upon him. The record discloses a very minimal investigation, and almost perfunctory examination at trial of this witness whose every motive must have been to insure that she be absolved of the heinous deed.

The credibility of this witness was critical not only to <u>how</u> the homicide occurred, but to the jury's determination as to the depraved nature of the killing.

A review of the testimony Mr. Ranitz presented to this Court establishes the following:

1. He did not personally know each juror upon voir dire. (H.T. Ranitz, p.82);

2. No juror questionnaire was available. (H.T. Ranitz, p.82);

3. He knew only 4 or 5 on the jury panel (H.T. Ranitz, p.85);

4. Only 3 jurors were questioned, and only as to a matter unrelated to capital punishment. (H.T. Ranitz, p.85);

5. Prior to trial no application for investigative funds was made, and there was no independent investigation. (H.T. Ranitz, p.61-62);

6. No witnesses were personally interviewed prior to their testimony. (H.T. Ranitz, p.62);

7. The medical examiner, Dr. Gary Howard was never interviewed. (H.T. Ranitz, p.63);

8. An examination of the autopsy report revealed to Mr. Ranitz that there were <u>two</u> types of wounds, stab and tearing, which was corraborative of the defendant's account. (H.T. Ranitz, p.64);

9. Mr. Ranitz saw before trial a statement of the defendant that Billie Jean Rose hit the victim on the head with a bottle, and the defendant

stabbed victim with a knife. (H.T. Ranitz, p.64);

10. Mr. Ranitz, failed to seek to corraborate the defendant's account in number 9, in his examination of Billie Jean Rose. (H.T. Ranitz, p.68);
11. Further corraboration of the defendant's account could have been made from testimony of Dr. Gary Howard, and no effort was made to do so, or argued to the jury. (H.T. Ranitz, p.69);
12. The victim's relationship with Cora Henderson, easily determined as a stormy, even violent one, was not examined, even though Mr. Ranitz knew before trial he would rely on the dangerous propensity of the victim. (H.T. Ranitz, p.73);
13. There was no investigation as to the victim's propensity for violence. (H.T. Ranitz, p.75);
14. Mr. Ranitz knew before trial that the aggressive or violent propensity of the victim might corraborate the defendant's account. (H.T. Ranitz, p.95);

15. There was no investigation as to the truthfulness of his client. (H.T. Ranitz, p.76);

16. There was no independent investigation of the existence of any prior police record of the prosecution witness, Billie Jean Rose, even though, prior to trial, Mr. Ranitz knew of her local employment as a "go-go girl", her involvement in the crime and its aftermath, and the critical need to impeach her testimony at trial or raise doubt as to her credibility. (H.T. Ranitz, p.77 & 105);

17. There was no effort made before trial corroborate defendant's assertion that Billie Jean Rose engaged in stealing and was fired at a carnival in Tennessee. (H.T. Ranitz, p.79);

18. There was no independent investigation of the nature of the crime of which defendant was convicted at age 18, even though Mr. Ranitz knew such conviction would be offered as evidence against his client if he were convicted. (H.T. Ranitz, p.91);

19. At no time prior to trial did counsel seek to contact any member of defendant's family. (H.T. Ranitz, p.93);

20. The State had agreed not to prosecute Billie Jean Rose, the prosecution witness, and defense counsel had not required the State to disclose the agreement. (H.T. Ranitz, p.96);

21. A substantial aspect of the defense was that there was "mutual combat" yet the medical examiner, Dr. Gary Howard was not examined on that subject. (H.T. Ranitz, p.109);

The foregoing represents some of those matters eliciated from the testimony of defense counsel at the trial which have compelled this Court to conclude that there was inadequate preparation for the trial, and ineffective representation at that stage.

The sentencing phase is stark. There exists only the briefest speech on Paul Hamilton's behalf, and no evidence whatever. Mr. Ranitz has acknowledged that before trial he understood the wide, almost limitless extent to which evidence could be offered to support life rather than death for the accused. (H.T. Ranitz, p.87-90). With respect to this the law is clear.

> "A jury must be allowed to consider on the basis of all relevant evidence not only why a death sentence should be imposed, but also why it should not be imposed. --- What is essential is that the jury have before it all possible relevant information about the individual whose fate it must determine.

Jurek v. Texas 428 U.S. 262, 271, 276 (1976).

It has already been pointed out that Mr. Ranitz had done nothing to attempt to discover evidence that might have afforded the jury a basis for sparing his client's life. Nothing was presented in evidence as a basis for mercy. Professor Gary Goodpaster points out: "As a matter of law and practice, the opportunity to present almost any arguably mitigating evidence crucially distinguishes death penalty trials from all other criminal trials." New York University Law Review 58:315 (1983).

The great challenge therefore, in being effective as defense counsel is to discover and present evidence which will mitigate, and present a reasoned basis to argue for life and not to "create the risk that the death penalty will be imposed in spite of factors which may call for a less severe penalty." Lockett v. Ohio 38 U.S. 586, 605, (1978). As the constitutionality of the application of the death penalty is assessed, it is significant "what counsel reasonably could have done but did not do at the penalty phase. -- The

adequacy of counsel's preparation, which does not appear on the record of trial, is at least as important as the adequacy of counsel's presentation, which does appear." Goodpaster, New York University Law Review 58:319 (1983).

In asking the question whether enough was done in this case to effectively represent Paul Hamilton in affording the jury a reason for sparing his life, this Court must answer in the negative.

After the very brief trial on the issue of guilt, the jury was asked to consider the sentence. The only option for it was life to be served in the penitentiary, or death. A reading of the transcript perhaps offers a more chilling aspect than ones actual presence in court did. One reviewing such an event cannot do so without the most profound sense of humility in inquiring whether the defendant obtained his full due from his counsel. At this point the question is not whether this twenty-three year old man did the alleged act, but whether he should die for it. As I read the record, there was nothing done in preparation for a meaningful plea to the jury for his life. While for example, the state placed in evidence the record of a prior conviction, neither the jury nor we, have any information regarding the circumstances surrounding it. No explanation was proffered by the defense. No investigation was made concerning it. We do not know of the quality of any earlier crime commmitted, nor whether there were mitigating circumstances. Counsel did

not know at time of trial, and had made no effort to find out.

The mother of the defendant testified before me that she was not asked to come to the aid of her son at any time. The record is devoid of any presentation - indeed counsel for the defense has testified that he had made no preparation for the sentencing phase of the trial except for his rhetorical plea.

In a capital case there exists an obligation to thoroughly investigate the defendant's life history. Without that counsel could have no basis to determine what might be available in mitigation. To place nothing whatsoever in evidence for a jury to consider is virtually to assert that even after an investigation into the life of the defendant, there can be absolutely nothing worthy to consider. If there is no examination of the defendant's life there manifestly has been an absence of a minimal standard of preparation. At the time of trial Mr. Ranitz knew of the possibility of pleading for Paul Hamilton's life, and he was unprepared for that. Information about the boyhood, the education, the family, the prior marriage, the children, the employment, the achievements, the family support of the defendant could have been acquired. It was not, and the failure to acquire it deprived counsel, quite possibly, of relevant information about his client. It failed to provide him with the opportunity to present to the jury a reasoned basis to spare

Paul Hamilton's life. Furman v. Georgia 408 U.S. 238, 309 (1972).

There can be no blinking from the Court's duty to see that a litigant's constitutional rights are protected. Though difficult in view of the general competence of defense counsel, it is my clear duty to grant Paul Hamilton's application. The record is abundantly clear that this petitioner was denied the effective assistance of counsel at the trial in which he was charged with murder.

For the reasons set forth the Petition is granted. Petitioner is remanded to Chatham Superior Court for re-trial.

this 21st day of June 1983

Jack Etheridge
Senior Judge
State of Georgia

JAN 27 1984
Office of the CLERK
SUPREME COURT, U.S.

IN THE SUPREME COURT

OF THE UNITED STATES OF AMERICA

OCTOBER TERM, 1983

ROLAND PAUL HAMILTON, Petitioner,	)	83-6173
v.	)	
WALTER D. ZANT, Respondent.	)	

MOTION TO PROCEED IN FORMA PAUPERIS

COMES NOW, ROLAND PAUL HAMILTON, by and through his undersigned counsel, and moves this Honorable Court to permit him to proceed in this Court in forma pauperis to pursue his Petition for Writ of Certiorari and any and all other proceedings connected therewith. As grounds for this Motion, Movant shows:

1.

Movant is presently incarcerated and in the custody of the State of Georgia, Department of Offender Rehabilitation, at the Georgia Diagnostic and Classification Center in Jackson, Georgia.

2.

Movant has no income, cash, checking or savings accounts, and does not own any real estate or other property of value.

3.

Movant is absolutely without funds sufficient to pay any costs relating to his Petition to this Honorable Court for Writ of Certiorari or any other proceedings connected therewith.

4.

Undersigned counsel for Movant is a member in good standing of the Bar of this Court. He has represented

Movant free of charge without reimbursement for expenses in all proceedings in this matter in the Courts below.

5.

This Motion is appended by the attached Affidavit, sworn to and signed by Movant, attesting that the underlying facts in support of this Motion are true.

WHEREFORE, Movant requests that this Court allow him leave to proceed in forma pauperis in connection with his pursuit of a Writ of Certiorari to the Supreme Court of Georgia and all other matters connected therewith.

RESPECTFULLY SUBMITTED,

Robert G. Fierer

ROBERT G. FIERER

141 Walton Street, N.W.
Atlanta, Georgia 30303
(404) 688-5500

No. 83-_____

IN THE SUPREME COURT OF

THE UNITED STATES OF AMERICA

October Term, 1983

ROLAND PAUL HAMILTON,)
)
v.)
)
WALTER D. ZANT.)

AFFIDAVIT IN SUPPORT OF MOTION TO PROCEED ON APPEAL IN FORMA PAUPERIS

I, ROLAND PAUL HAMILTON, being first duly sworn, depose and say that I am the Petitioner in the above-entitled case; that in support of my motion to proceed on appeal without being required to prepay fees, costs or give security therefor, I state that because of my poverty I am unable to pay the costs of said proceeding or to give security therefor; that I believe I am entitled to redress; and that the primary issue which I desire to present on appeal is that I received ineffective assistance of counsel at the trial of my case.

I further swear that the responses which I have made below relating to my ability to pay the cost of prosecuting the appeal are true.

1.

I am not presently employed. I have been incarcerated since my trial in 1978 and have not been employed since that time. Yes/True

2.

I have not received any income within the last twelve months. Yes/True

3.

I do not have any cash, checking or savings accounts. Yes/True

4.

I do not own any real estate, stocks, bonds, notes, automobiles, or other valuable property. True

5.

I do not have any persons dependent upon me for support. True

I understand that a false statement in this affidavit will subject me to penalties for perjury.

Roland Paul Hamilton
ROLAND PAUL HAMILTON
January 20, 1984

Sworn to and subscribed to before me this 20th day of January, 1984.

NOTARY PUBLIC

Notary Public, Georgia, State at Large
My Commission Expires Oct. 16, 1987

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Motion to Proceed In Forma Pauperis has been served upon the Assistant Attorney General, Mary Beth Westmoreland, by depositing the same in the United States Mails affixed with adequate postage and addressed as follows:

Ms. Mary Beth Westmoreland
Assistant Attorney General
132 State Judicial Building
Atlanta, Georgia 30334.

This 25th day of January, 1984.

Robert G. Fierer

ROBERT G. FIERER

NO. 83-6173

Supreme Court, U.S.
FILED
FEB 27 1984
ALEXANDER L. STEVAS
CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1983

ROLAND PAUL HAMILTON,

Petitioner,

v.

WALTER D. ZANT,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE SUPREME COURT OF GEORGIA

BRIEF IN OPPOSITION FOR THE RESPONDENT

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QUESTIONS PRESENTED

I.

Did the Supreme Court of Georgia properly conclude, contrary to the state habeas corpus court, that Petitioner received effective assistance of counsel at the guilt stage of the trial?

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NO. 83-6173

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1983

ROLAND PAUL HAMILTON,

Petitioner,

v.

WALTER D. ZANT,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE SUPREME COURT OF GEORGIA

BRIEF IN OPPOSITION FOR THE RESPONDENT

PART ONE

STATEMENT OF THE CASE

Petitioner, Roland Paul Hamilton, was indicted by the grand jury of Chatham County, Georgia, during the June Term of 1977, for the murder of John A. Shinall. Following a trial by jury, Petitioner was found guilty of murder and sentenced to death. A subsequent motion for a new trial was denied and a notice of appeal was filed on March 10, 1979. On direct appeal, the Supreme Court of Georgia affirmed the conviction and the death sentence. Hamilton v. State, 244 Ga. 145, 259 S.E.2d 81 (1979).

A petition for a writ of certiorari was filed in the Supreme Court of the United States. That Court granted the petition and remanded the case to the Supreme Court of Georgia for further review. Hamilton v. Georgia, 446 U.S. 961 (1980). On remand, the Supreme Court of Georgia reaffirmed the death sentence. Hamilton v. State, 246 Ga. 264, 271 S.E.2d 173

(1980). A second petition for a writ of certiorari was denied on January 12, 1981. Hamilton v. Georgia, 449 U.S. 1103 (1981).

The Petitioner then filed a petition for habeas corpus relief in the Superior Court of Butts County in March 1981. A first hearing was held on the petition on October 6, 1981 at which time various witnesses testified including the assistant district attorney, Petitioner's trial counsel and Petitioner's mother. A second hearing was held on December 1, 1981. Petitioner himself testified and also presented the testimony of Dr. Larry Howard. A third hearing was held on April 16, 1982, at which time arguments were presented and documentary evidence was submitted. A hearing was held on April 15, 1983 at which time two attorneys were offered as "experts." Additional documentary evidence was also tendered at that time. A final hearing was held on April 21, 1983, at which time Petitioner offered an additional attorney to testify as an "expert." The trial transcript and record utilized on appeal were also presented to the state habeas corpus court. After reviewing all of this evidence, the court granted habeas corpus relief as to the conviction and sentence on June 21, 1983, concluding that Petitioner received ineffective assistance of counsel at both phases of his trial.

The Respondent filed an appeal to the Supreme Court of Georgia challenging the findings by the state habeas corpus court, both as to the conviction and the sentence. The Supreme Court of Georgia concluded that Petitioner received effective assistance of counsel at trial, but found that Petitioner received ineffective assistance of counsel at the penalty phase. Thus, the court vacated the death sentence but affirmed the conviction. Zant v. Hamilton, 251 Ga. 553, ___ S.E.2d ___ (1983). Petitioner has thus filed the instant petition for a writ of certiorari from the decision by the Supreme Court of Georgia.

PART TWO

STATEMENT OF FACTS

The facts underlying the instant conviction were thoroughly set forth by the Supreme Court of Georgia in its review on direct appeal. A detailed statement of the facts will not be set forth at this time, but will be reviewed as necessary to examine the allegation presented. The evidence presented before the state habeas corpus court will be examined during the argument portion of the brief.

PART THREE

REASON FOR NOT GRANTING THE WRIT

I. THE SUPREME COURT OF GEORGIA PROPERLY CONCLUDED THAT PETITIONER RECEIVED EFFECTIVE ASSISTANCE OF COUNSEL AT THE GUILT PHASE OF HIS TRIAL.

Petitioner has challenged the decision by the Supreme Court of Georgia concluding that Petitioner received effective assistance of counsel at the guilt phase of his trial, which decision is contrary to that reached by the state habeas corpus court. Petitioner asserts that the Supreme Court of Georgia erred in concluding that no prejudice had been demonstrated at the guilt-innocence phase of the trial and that the Supreme Court of Georgia did not apply any standard in making this decision.

The evidence presented at the state habeas corpus court revealed that trial counsel, Mr. John F. M. Ranitz, Jr., had been in practice for approximately thirty-three years at the time of the trial and had devoted approximately twenty-five percent of his practice to criminal cases. Two other attorneys in Mr. Ranitz' office helped him with the preparation of the case. One of these attorneys interviewed the Petitioner while he was in jail and also talked with some of the police officers. This particular attorney had been an assistant district attorney previously and knew some of the police officers and people in the district attorney's office. Attorney Herman Coolidge talked with some of the witnesses and Mr. Ranitz also talked to the police officers and detectives as well. Mr. Ranitz talked with the assistant district attorney who tried the case and had access to the state's file. Mr. Ranitz also testified that he found some correspondence in his file with the forensic evaluation unit at Georgia Regional Hospital. At the time Mr. Ranitz received the case, the Petitioner had already been indicted, thus, there was no preliminary hearing conducted.

The testimony reveals that Mr. Ranitz reviewed the file of the district attorney and examined autopsy reports, statements by witnesses and the statements of the Petitioner. Mr. Ranitz testified in regard to the conduct of the voir dire that he had been practicing in Savannah for thirty years and had a strategy of not irritating the jury. He also indicated that he knew quite a few people on the panel and did not feel that it was necessary to conduct an extensive examination. He talked to the district attorney concerning a manslaughter charge, but was unsuccessful in negotiating a plea. He made a tactical decision to stipulate the cause of death during the guilt-innocence phase because he did not want the photographs of the body put into evidence and did not want the testimony of Dr. Howard to come in at the guilt-innocence phase concerning the condition of the body. He felt that this stipulation was beneficial and was a part of his overall trial strategy. This also necessarily eliminated the testimony of Dr. Howard concerning the nature and extent of the wounds.

Mr. Ranitz talked to the Petitioner concerning statements that had been made and determined that the statements were generally exculpatory. Mr. Ranitz also testified that the Petitioner told him that the statements were voluntary and that he was not coerced into making any of the statements. Mr. Ranitz made a tactical decision not to place the Petitioner on the witness stand because he did not think that the Petitioner could withstand cross-examination.

Dr. Larry Howard testified before the state habeas corpus court. Dr. Howard had examined the body of the victim after the body had been exhumed. He did not testify that the wounds were consistent with mututal combat, but merely indicated that the wounds were combative wounds rather than torturing wounds. He testified that the wounds were inflicted with what appeared to be intent to incompacitate and not merely to inflict pain. He also testified that the body was in an extremely advanced stage of decomposition which had a great effect on any determinations

he could make. He stated he had no way to determine whether any fighting took place between the two individuals.

The Supreme Court of Georgia concluded the following in regard to the superior court's review of the issues:

> The superior court in this proceeding has concluded that Hamilton received ineffective assistance of counsel at the guilt-innocence and sentencing stages of his trial. This conclusion is based on the following findings: that although counsel knew only four or five members of the traverse jury panel, he questioned only three jurors on voir dire examination and only as to a matter unrelated to capital punishment; that he made no application for investigative funds and conducted no independent investigation; that no witnesses were personally interviewed prior to their testimony; that the autopsy report and other expert medical evidence revealed that two types of wounds, stabbing and tearing, were inflicted upon the deceased; that this supported Hamilton's statement that Billie Jean Rose hit the victim on the head with a bottle; however, defense counsel failed to cross-examine Billie Jean Rose concerning this; that the deceased had a known propensity for violence, which was not investigated; that there was no investigation of grounds on which Billie Jean Rose's testimony and her credibility could have been impeached; that there was no investigation of a prior criminal conviction entered against Hamilton when he was

> 18 years of age, even though defense counsel knew that this would be offered against Hamilton if he was convicted; that no member of Hamilton's family ws contacted prior to trial, even though they could have given evidence in mitigation; and that the state had an agreement not to prosecute Billie Jean Rose, which defense counsel did not require the state to disclose.

Zant v. Hamilton 251 Ga. at 554.

The court concluded that these findings were supported by the evidence.

After examining these findings, the Supreme Court of Georgia concluded that the findings made by the superior court supported the conclusion that Petitioner received ineffective assistance of counsel at the penalty phase, but did not support the conclusion that he received ineffective assistance at the guilt-innocence stage. The court found:

> In our opinion, even if those portions of Billie Jean Rose's testimony constituting a disclaimer of her involvement in the crimes be disbelieved as self-serving, Hamilton's own pretrial statements, as well as other evidence in the case, lead inexorably to the conclusion that he is guilty of murder. "[E]ven when counsel's investigation and preparation are determined to have been seriously inadequate, there must be a showing that the habeas petitioner was to some degree prejudiced thereby . . . " Washington v. Watkins, 655 F.2d 1346, 1356 (5th Cir. 1981).

Zant v. Hamilton supra. at 555. Thus, the court concluded that counsel was not ineffective and no prejudice was shown under any standard that could have been applicable.

Petitioner asserts that the state habeas corpus court found that no pretrial investigation was conducted. This finding actually relates to counsel's lack of outside investigation. The record is clear on its face that counsel did review the entire file of the district attorney, that other attorneys working with counsel interviewed witnesses and that there was an investigation conducted in the case. The mere fact that counsel may not have conducted an investigation separate from these sources is insufficient to conclude that counsel was ineffective. "Counsel for a criminal defendant is not required to pursue every path until it bears fruit or until all conceivable hope withers." Lovett v. Florida, 627 F.2d 706, 708 (5th Cir. 1980). The attorney must conduct an investigation, including an examination of the facts, circumstances and law involved. The record in this case clearly shows that Mr. Ranitz did make such an investigation by examining all of the evidence that the state had in its possession and by having other attorneys talk with various persons involved. Mr. Ranitz also talked with the Petitioner in this case.

Respondent further asserts that the burden of proving prejudice should rest upon the Petitioner and Petitioner should be required to show that the ineffective assistance, if such exists, must result in an actual and substantial disadvantage to the course of his defense. Washington v. Strickland, 693 F.2d 1243, 1262 (5th Cir. 1982) (en banc), cert. granted, ___ U.S. ___, ___ S.Ct.___ (1983). A review of the facts of the instant case clearly shows that no actual and substantial disadvantage resulted to the Petitioner from any alleged ineffectiveness on the part of trial counsel. As noted by the Supreme Court of Georgia, the evidence led clearly to the conclusion that the Petitioner was guilty of murder. No showing made by the Petitioner could have resulted in a

different verdict in this case. Therefore, Petitioner was not actually and substantially disadvantaged by any actions or inactions on the part of trial counsel.

Respondent submits that the Supreme Court of Georgia properly concluded that Petitioner received effective assistance of counsel at trial and was not prejudiced by any inactions on the part of trial counsel. This finding should be made under any standard applied. Therefore, no reason exists for this Court to grant certiorari to review any issue presented in this case.

CONCLUSION

For the above and foregoing reasons, Respondent respectfully requests that this Court deny the petition for a writ of certiorari filed on behalf of Petitioner, Roland Paul Hamilton.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Mary Beth Westmoreland, a member of the bar of the Supreme Court of the United States and counsel of record for the Respondent, hereby certify that in accordance with the rules of the Supreme Court of the United States, I have this day served a true and correct copy of this brief in opposition for the Respondent upon the Petitioner by depositing a copy of the same in the United States Mail with proper address and adequate postage to:

Mr. Robert G. Fierer
141 Walton Street N.W.
Atlanta, Georgia 30303

This 23rd day of February, 1984.

Mary Beth Westmoreland
MARY BETH WESTMORELAND